TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 690.

285

F. F. GREEN, APPELLANT,

vs.

THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN AND THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 20, 1912.

(23,265)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 25, 1912.

1 I. *Petition, etc.*

Court of Claims.

No. 30179.

F. F. GREEN
vs.
THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN.

The original petition was filed herein on June 8, 1908, to which the defendants, on April 25, 1910, filed a demurrer. This demurrer was argued and submitted October 17, 1910. On October 24, 1910, the Court filed an order overruling the demurrer. To this decision the defendants, on November 10, 1910, filed a motion for re-hearing. This motion was argued and submitted November 21, 1910. On January 16, 1911, the opinion of the Court, by Barney, J., was delivered, in which the demurrer was sustained as to the Menominee Tribe of Indians and overruled as to the individual Indians named in the petition, and leave was granted to the petitioner to amend his petition within 60 days. Subsequently, to wit, on March 11, 1911, the claimant filed his amended petition which appears later in this record.

2 II. *Answer of the Defendant Indians. Filed Dec.* 22, 1908.

In the Court of Claims.

No. 30179.

F. F. GREEN
vs.
THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN.

Answer.

To the Chief Justice and Judges of the Court of Claims:

Now come the defendants herein and for answer respectfully show:

First. That they deny each and every allegation in complainant's petition contained.

Second. That the goods claimed by the petitioner herein to have been furnished to certain individuals, if so furnished, were furnished to the individuals named upon their individual credit and account and were not furnished upon the credit of the Menominee Tribe, nor upon any agreement or account with the said tribe.

Third. That many of the individuals against whom accounts are herein stated are now dead.

Fourth. That many other of the Individuals against whom accounts are herein stated were never engaged in logging operations upon the Menominee Reserve and that the goods, if so furnished to them as alleged were so furnished to them for other purposes than those contemplated in the act under which this action is brought.

Fifth. That many other of the persons against whom accounts are herein stated are not members of the Menominee Tribe of Indians but are persons not embraced within the provisions of the act conferring jurisdiction upon this court.

Sixth. That large quantities of the goods alleged herein to have been furnished to members of the Menominee Tribe, if so
3 furnished, were actually furnished for uses and purposes other than carrying on logging operations upon the Menominee Indian reservation in Wisconsin.

Wherefore the defendants pray that the petition herein may be dismissed and that the petitioner shall take nothing by his action.

HENRY S. COMSTOCK,
Att'y for Defendants.

W. S. FIELD,
Of Counsel.

III. *Claimant's Replication. Filed December* 31, 1908.

Replication.

For replication to defendants' plea, the claimant denies each and every material averment of fact therein contained and joins issue thereon.

DUDLEY & MICHENER,
Attorneys for Claimant.

[Endorsed:] In the Court of Claims. F. F. Green vs. Menominee Indians in Wisconsin. No. 30179. Answer. Henry S. Comstock, Att'y for Defendant; W. S. Field, of Counsel.

4 IV. *Claimant's Motion to Make the United States a Party Defendant. Filed May* 28, 1910.

Comes now the claimant and moves the court for leave to make the United States a party defendant in the above entitled case, and to amend the petition by adding the words "and the United States" after the name of the other party defendant.

DUDLEY & MICHENER,
Attorneys for Claimant.

The above motion was argued and submitted on November 21, 1910. On January 18, 1911, the Court filed an order allowing the same.

5 V. *Amended Petition. Filed March* 11, 1911.

No. 30179.

F. F. GREEN
vs.
THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN and THE UNITED STATES.

Amended Petition.

To the Chief Justice and Judges of the Court of Claims:

Your petitioner respectfully represents and shows:

1. That he is a citizen of the United States and a resident of the State of Wisconsin.

2. That by virtue of the provisions of an act of Congress, entitled "An Act to authorize the Secretary of the Interior to issue patents in fee to purchasers of Indian lands under any law now existing or hereafter enacted, and for other purposes," approved on the 29th day of May, 1908, jurisdiction was conferred on this court to hear, determine and render final judgment, notwithstanding lapse of time or the statute of limitations, for any balance found due petitioner against or from the Menominee Tribe of Indians in Wisconsin, or any of them, for supplies, goods, wares, merchandise, tools and live stock furnished certain members of that tribe after January 1, 1880, for the purpose of carrying on logging operations upon the Menominee Indian Reservation in that state; and your petitioner avers that between the first day of January, 1886, to and including October 31, 1889, he and W. H. Stacy were duly licensed traders, in conformity with law, with the Menominee Tribe of Indians, who were then and now are under the care and guardianship of the United States, and within the country occupied by those Indians, known as the Menominee Reservation, Green Bay Agency, Wisconsin; that in the fall of 1886 the members of the tribe were in want, destitution, and without available means of support, and on the request of such Indians for the right to cut and sell timber from their reservation, the United States authorized and em-

6 powered the then Indian Agent for those Indians to permit the Indians to cut and sell the dead and down timber on such Reservation, ten per cent of the proceeds to go to the benefit of the said tribe and of those performing labor in that respect, and thus provide the Indians with means of support, as well as teach them industrious and thrifty habits, honesty and integrity. The Indians were not able to take advantage of such permission to cut and market that timber, for they were destitute and without means to purchase supplies, were without credit, and were unable to obtain it for that purpose. In order that the Indians might be relieved of their difficulties and their urgent necessities be provided for, it was agreed by the Indian Agent and the Head men of the tribe that if petitioner and W. H. Stacy would extend credit to the companies,

crews or squads of Indians that should be formed for the purpose of carrying on logging operations, and also extend a limited amount to their respective families, that the same method of payment for supplies so furnished should be continued, as had been agreed upon with the previous trader, M. Wescott, which method of payment was discussed and agreed upon by the Indian Agent and by the head men through their interpreter. That the said agreement with the said M. Wescott was entered into on or about the first day of December, 1881, under the conditions and to the effect stated below. On and before December first, 1881, the Menominee Indians were in a destitute condition, without credit or available means of support, and had procured the right to cut and sell the dead and down timber on their reservation, but were unable to engage in such work for the reason that they lacked equipment and supplies necessary for the prosecution thereof, and were unable to secure such equipment and supplies on account of lack of credit. That about said date the Commissioner of Indian Affairs sent one John A. Wright, of Baltimore, Maryland, a special agent, to the Menominee Reservation for the express purpose of making some arrangement whereby the Indians could obtain equipment and supplies necessary for engaging in logging operations. That thereupon a council
7 of the tribe was held at Keshena, Wisconsin, which was attended by all of the chiefs and head men of the tribe, and practically all the members thereof, and also by the Indian Agent, and it was thereupon agreed by and between the said M. Wescott as one party to the agreement, and the Menominee Indian Tribe as the other party thereto, that the said M. Wescott, the duly licensed Indian Trader, at Keshena, Wisconsin, should furnish necessary equipment and supplies to those members of the tribe who desired to engage in logging operations to enable them to carry on such work, and support their respective families while so engaged, such equipment and supplies not to exceed the sum of $2.50 for each thousand feet of logs so cut and sold; that all logs cut and hauled by the Menominee Tribe in the logging operations were to be sold through the Indian Agent to the highest and best bidder; and that the prices for such supplies as were to be furnished by the petitioner, should be such prices as were being paid in cash for similar supplies in that part of the state, with transportation added; that said Menominee Tribe promised and agreed that such equipment and supplies so furnished should be paid for out of the first proceeds from the sale of the logs so to be cut and sold. That said agreement was made with the consent and approval of the Indian Agent residing at Keshena, Wisconsin, and in charge of said Menominee Indian Reservation, and also by said special agent, John A. Wright. That said agreement had the unanimous approval of all members of the tribe present at said council. That said agreement was made orally by the said M. Westcott, personally, and by the chiefs and head men on behalf of said tribe, which method of agreement then was, and for a long time prior thereto had been the only method of entering into contracts by said Menominee Tribe of Indians; that the authority of the chiefs and head men of the tribe to contract for and

on behalf of the tribe had never been questioned by any member of said tribe, and that contracts so entered into had always been treated as valid and binding on the tribe, and fulfilled by the tribe, without objection on the part of any member thereof. That said
8 agreement and contract with the Menominee Tribe remained in force until the said M. Wescott ceased to be the licensed Indian Trader, and your petitioner was duly appointed as such in the fall of 1886.

That on or about the first of January, A. D. 1887, it was mutually agreed by and between your petitioner and W. H. Stacy on the one part, and the Menominee Tribe of Indians on the other, that the agreement above set out with M. Wescott should be continued in full force and effect with your petitioner and said W. H. Stacy. That said last mentioned agreement was made with your petitioner and W. H. Stacy, personally, and on behalf of the Menominee Tribe by the chiefs and head men thereof, which said chiefs and head men still continued to have and were recognized as having authority to make contracts in behalf of, and binding on said tribe. That said last mentioned agreement was approved by the Indian Agent at Keshena, Wisconsin, and was acquiesced in by all members of said tribe, and treated by all parties interested as valid and binding on the contracting parties. That your petitioner and the said W. H. Stacy furnished the equipment and supplies for which judgment is claimed in this action, in accordance with and relying upon said agreement, and did not and would not extend credit to the indivinal members of said tribe, but extended such credit solely to the tribe, relying upon said agreement.

3. The condition of the Indians remained such through the following winters and into the year 1889 that the petitioner and said W. H. Stacy, under and pursuant to the agreement above described, and with the approval of the Indian Agent and of the United States, were obliged to and did continue to furnish those Indians with supplies, and for the supplies so furnished said Indians the petitoner and said Stacy were promptly paid, with a few exceptions, until the year 1889, at which time and during that year and from that year until this time the Indians and the government of the United States failed to pay for the supplies furnished said Indians in that year. The following is a statement of the supplies furnished
9 as aforesaid, but which have not been paid for:

Frank Waubone	$58.04
Mose Pahtise	47.00
Mose Corn	3.20
Paul Baxter	75.09
Paul Ke ne bonay	130.98
Knete Quot Ke saw	49.32
Mose L. Bear	41.13
Peter Wytossa	33.59
Robert me so man	10.26
Louis Shawano	32.84
Catharine Dequndre	19.42

Frank Recloud	11.93
Antoine Stick	199.69
Peter Ke she not kow	19.72
Louis Keshena	20.32
J. D. Crignon	45.39
John Cardish	39.16
Peter Pahmonecote	105.40
Isaac At pak kiew	65.75
Mose Nunway	47.11
Jacob Mosomon	6.38
Joseph Ke che Kum	42.92
Mitchel Mackabee	23.57
Jos. Ashkechequam	72.73
Louis Tucker	62.67
Harret Iahmokeiw	39.00
John Dick	100.77
Peter Martin	66.82
Lewis Dodge	163.91
Gabe Pahmanstuck	18.73
Barney Waukecheon	313.81
John V. Satterlee	176.88
Joseph Peyanasset	57.13
Dave Kuh Kem me kiew	33.57
Kah mo won	69.05
Dave Iah sha to ka	13.76
Dominick Morgan	21.07
Fred Grignon & Co	10.00
Lewis Waukets	7.63
Eleck V. Corn	61.02
Charles Wescott	39.92
Gus Valandra	176.69
Joseph Oshkenaniew	174.45
John Keshenatassa	14.97
Jos. Payatch cuett	57.08
Chickney, Chief	67.34
Bill Keshkatapa	25.07
John Petetah	180.17
Alex. Peters	2.08
Lewis, Oshkenaniew	367.45
Peter Tomah	183.79
Fred Grignon	288.81
Chas. Somon	13.51
Linn Waupoose	17.35
Henry Melott	176.43
Noah Peters	225.26
Mitchel Wossan	.....
Antoine Iah sha	155.76
John Tomoon	116.53
Mitchel Waubono	21.85
Mary A. Martin	64.98
Mose Sanapan	23.04

Jos. Grignon	350.90
Jerome Pynesha	183.19
Lyman Skesecks	3.95
John Wiscoby	565.49
Quahkesan & Co.	45.63
M. Bresbois & Co.	461.35
John Waupoose	677.05
Martin & Waukicheon	76.77
Barney Brisbois	194.82
Mose Sanapan	12.88
Mitchel Oshkenaniew	454.32
John Shanawet	62.32
John Latender	827.17
Mitchel Kosh Kosh Ka	75.81
Anton Waubono	32.28
Paul Davis	7.84
Chas. Baxter	27.99
Jos. Davis	732.38
Lewis Skesecks	52.37
Al Boyed	731.79
J. B. Waukoheon	30.38
Mose Maikauck	15.02
Shawancassha	4.90
Kasa Ashpahmasha	10.40
Geo. Payawaset	64.94
John L. Dodge	43.06
Aconomy Oshkosh	44.19
Jos. Lamette	81.63
Keshe ka niew	3.00
Chequa	2.80
J. Wiscoby	151.17
Chas. Chickney	10.20
Lewis Komanakin	89.18
Jo Nosecum	76.42
Jos. La Fransbois	34.20
William Prickett	25.72
Stebe Askamett	28.24
Mitchel Kah pah o sha	55.43
Mose McKimatas	3.40
Mose Corn	17.07
Pah mah kah na tuck	3.40
John Tucker	8.83
Jo nah wah quate	32.44
Mashequett & Co.	144.73
Mitchel Beaupre	78.65
Jo McKemetas	342.64
Sopha Grignon	121.76
The. Johnson	147.83
Simon Dodge	24.13
Jo Shawano Kesick	80.91
John Mashequett or Sanopau	10.24

	John Pongleton	3.69
	Frank Moskowet	8.10
	Mose Tice	4.31
	Kow Keett	7.29
	Jo me ah wa non	53.52
	Lewe Durham	20.81
	Lewe Waupoose	159.35
	Mitchel Foxy	7.91
	Nespet	53.86
	Ah she ca tah	10.00
	John Menash	28.20
	Gus Corn	3.40
	Kosh Kesh e ka	49.15
	Pete Wascum	2.41
	Pah she mah Yesha	15.16
	Jos. Werhae	5.95
	Pah turn	1.55
	Nah yah to	3.94
	Way ma co no met	32.51
	Keokuk	10.10
	Jo Seymour or Corn	18.38
	Mitchel Shawanomeatto	4.34
	Pah man	2.62
	John Waukan	24.42
11	Waukeshan, Chief	9.81
	Pay a wa set	85.55
	She pe kan	3.34
	Louis Kah katch	5.90
	Ed Menominee	9.02
	Peter Che tank pah choka	4.00
	Soloma Match spato	6.44
	Mashaquett	13.28
	P. Akemart	11.88
	Mitch. Lamotte	6.10
	Albert La Rush	5.76
	Louis La Franbois	103.70
	Peter Fly	18.76
	Sam Pahwasha	3.85
	Peter Wa was cum	5.35
	J. B. Beaupre	9.45
	Jim Pah me watt	11.58
	Aha rah man	10.45
	M. Wy tossa	2.83
	John Corn	11.68
	Mary Lamotte	11.40

4. Petitioner and said Stacy, in complying with the contracts and to avoid any extensive and unwarranted amounts of credit, inaugurated, at their own expense, a system of accounting, whereby they made a careful count of the logs cut and hauled by the companies, squads and individuals of the Indians, as well as the supplies fur-

nished them for their benefit and for and on behalf of the tribe. All the supplies furnished to the Indians, after the making of the agreements aforesaid, were of good quality and were sold, delivered and supplied to that tribe in the manner in this petition stated, and at the prices thus agreed upon.

Petitioner avers that the Indian Agent at the Green Bay Agency received the proceeds of the sale of logs so cut, hauled, banked and delivered by the Indians who were furnished supplies by petitioner and said Stacy, which amounted to a large sum, and that if the proceeds of such sales had been applied by such Indian Agent to the payment of the supplies furnished by petitioner and Stacy in accordance with the agreements herein described, the bills and accounts for the supplies so furnished would all have been paid and satisfied, but such proceeds were not so applied.

Petitioner further says that the logging operations conducted and the credits extended by him and Stacy were for the benefit of the tribe, they received the entire benefit thereof, and they were thus enabled to support themselves and their families, which would
12 have been difficult, if not impossible, without the aid of such credit to enable them to carry on the logging operations.

Petitioner is informed and believes, and on such information and belief he avers, that there is a large fund in the possession of the United States to the credit and for the benefit of said Menominee Tribe of Indians, derived through their logging operations, and now amounting to more than a million and a half of dollars, which fund has been accumulated through the credit extended and assistance rendered by licensed traders to the Menominee Indians in logging operations.

5. Petitioner avers that in the autumn of 1886, when the agreement was reached between the United States, the Menominee Tribe of Indians, the said W. H. Stacy and this petitioner, the said Stacy was the duly licensed trader to and with the Menominee Indians on their reservation, and that petitioner was employed by the said Stacy to have, and therefore he did have, full charge and supervision over the entire business and matters pertaining to the several transactions had as in this petition set forth, all with the consent and under the control of the Commissioner of Indian Affairs and with an agreement ratified and confirmed by such Commissioner, whereby petitioner was to receive for his said services one-half of the profits to be derived from the business conducted under the license to the said Stacy as such trader. Petitioner further avers that when the term of said Stacy and the term of this petitioner as Indian traders to the Menominee Indians expired, and it became necessary to have an accounting to determine petitioner's interest in the proceeds of such business, litigation arose between petitioner and said Stacy and a receiver was appointed to take charge of the affairs and matters of that business, and such receiver did take charge thereof and of the assets and liabilities and made an accounting of the same to the court having jurisdiction of such litigation, and thereafter such proceedings were had under the order and direction of such court that all

the assets of said business, including the accounts and claims
13 herein sued upon, were put up for sale by the said receiver and they were sold to this petitioner, including the accounts, claims and demands, rights and credits sued upon in this petition, and the same were delivered to the petitioner, together with all books of account, and since that time have been and now are his exclusive property and in his possession, no assignment or sale of any portion thereof having been made by this petitioner to any other person or to any corporation.

6. Your petitioner avers that there is due him from the Menominee Tribe of Indians, or from the individual members thereof, as may be found and adjudicated by the court, the sum of Thirteen Thousand and Eighty-seven dollars, Forty-six Cents ($13,087.46).

Wherefore the petitioner prays judgment for Thirteen Thousand and Eighty-seven Dollars, Forty six Cents ($13,087.46).

DUDLEY & MICHENER,
Attorneys of Record.

14 DISTRICT OF COLUMBIA, *ss:*

Louis T. Michener being duly sworn deposes and says that he is a member of the partnership of Dudley & Michener, such partnership being authorized by power of attorney in this case filed, to make affidavit; that he has read and understands the foregoing amendments to the petition; and that he is informed and believes that the statements therein contained are true in substance and in fact.

LOUIS T. MICHENER.

Subscribed and sworn to before me this 11th day of March, 1911.
[SEAL.] HERBERT L. FRANC,
Notary Public, D. C.

15 VI. *Demurrer to Amended Petition. Filed March* 28, 1911.

Now come the defendants, by the Attorney General of the United States, and demurring to the amended petition filed in this cause, state as the ground thereof that the act of Congress of May 29, 1908 (35 Stat., 444, 445), referring the claim to this court, did not authorize the claimant to institute a suit against the United States.

And further demurring to the said amended petition, state as the ground thereof that the amendment to the original petition of the claimant constitutes an entirely new case by changing the alleged agreement with the tribe from a guarantee for the debts of the individual members to an assumption by the tribe of all liability upon said claim to the said claimant.

And further demurring to the said amended petition, state as the ground thereof that the act conferring jurisdiction upon this court was enacted by Congress in violation of the fifth amendment to the Constitution of the United States, and conferred no jurisdiction upon this court to consider the subject-matter of the said petition.

And further demurring to the said amended petition, state as the ground thereof that the petition does not allege facts sufficient to constitute a cause of action.

JOHN Q. THOMPSON,
Assistant Attorney General.

GEORGE M. ANDERSON, *Attorney.*

16 VII. *Argument and Submission of Demurrer.*

On December 11, 1911, the demurrer of the defendants to the amended petition of the claimant came on to be heard. Mr. George M. Anderson was heard in support of the demurrer. Mr. Louis T. Michener was heard in opposition thereto and the demurrer was submitted.

17 VIII. *Per Curiam. Filed February* 12, 1912.

F. F. GREEN
v.
THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN and THE UNITED STATES.

Per Curiam:

The questions herein arise on the defendants' demurrer to the amended petition on substantially the same grounds as those assigned on the demurrer to the original petition, which were, in substance, (1) that the jurisdictional act of May 29, 1908 (35 Stat. L., 444, 445), was in violation of certain provisions of the Constitution of the United States, and (2) that the facts averred were not sufficient to constitute a cause of action.

In the original petition the claimant, by the averments thereof, sought to fix liability upon the tribe as guarantor or upon the individual members thereof for the supplies furnished them by the claimant, as therein alleged, and judgment was prayed accordingly.

The material averments of the original petition are set forth in the opinion of the court (46 C. Cls., —), and need not be repeated here further than to say that by the second paragraph thereof it is averred in substance that "it was agreed by and through the Indian agent and the head men of the Menominee Tribe, to and with this petitioner and said Stacy, that the Menominee Tribe of Indians would indemnify petitioner and said Stacy and assure the payment to them of all supplies so to be furnished by them."

The demurrer, as to the liability of the tribe, was sustained with leave to amend and overruled as to the liability of the individual Indians, the court, among other things, saying:

"We are instructed in the jurisdictional act to 'determine if such liability be that of said Menominee Tribe of Indians as a tribe or that of individual members of the tribe.' It appears to us that the promise or 'indemnity' of the Menominee Tribe of Indians as alleged

is but a promise to pay the debt of another and clearly within the statute of frauds. There is no averment in the petition of any act indicating that the credit for the goods sold was given to the tribe. In fact every averment shows that the credit was given to the Indians individually, and the tribe was simply a guarantor."

And further commenting on the effect of a promise of indemnity, with various citations of authorities in support of the propositions stated, the court said:

"It is nowhere alleged in the petition that any part of the proceeds received for the logs which were cut went into the tribal
18 funds. We have no hesitancy in deciding that under the averments of the petition the Menominee Tribe of Indians is but a naked guarantor for the debt of another, and such promise not being in writing is void under the statute of frauds.

"It might further be added that it is very doubtful whether the 'head men' of the tribe, or the tribe in any manner, had any right to make such a contract as stated in the petition, even if it was in writing." (R. S., 2103-2106.)

Since that decision the claimant has amended the second paragraph of his petition; and after stating therein that 10 per cent of the proceeds arising from the sale of timber were to go to the benefit of the tribe, it is averred in substance, that in December, 1881, the tribe was in a destitute condition, without credit or available means of support, and that while they had procured the right to cut and sell dead and down timber on the reservation they were unable to go ahead for the reason that they lacked the equipment and supplies necessary therefor; that to meet their necessities the chiefs and head men of the tribe, with the consent of the members thereof in council, as well as with the approval of the Indian agent, entered into an oral agreement with one Wescott, the then duly licensed Indian trader, whereby the tribe agreed that payment for all supplies furnished to the individual members should be made out of the first proceeds arising from the sale of logs, such sale to be made through the Indian agent, not, however, exceeding $2.50 for each thousand feet of logs cut and sold, which agreement, it is further averred in substance, was continued in 1887 in full force by the chiefs and head men, acting for the tribe, with the claimant and his then associate Stacy, who had in 1887 succeeded said Wescott as Indian trader, and, further, that the supplies so furnished by the claimant under the agreement so continued were up to 1889 paid for, but that thereafter the supplies so furnished to the individual members, amounting in the aggregate to $13,087.46, remain unpaid for. Hence this action.

It will be observed that in the opinion ruling on the demurrer to the original petition doubt was expressed as to whether the head men of the tribe or the tribe in any manner could contract, even if in writing, without the approval of the Secretary of the Interior, as provided by Revised Statutes, sections 2103 to 2106, wherein, by section 2103, it is provided in substance that no agreement shall be made by any person with any tribe of Indians or member thereof not citizens of the United States for the payment or delivery of

money or other thing of value relative to their lands or to any claims growing out of or in reference to annuities, installments, or other money claims, demand or thing under laws or treaties with the United States or official acts of any officer thereof, describing minutely the manner in which such agreement shall be made.

It is therefore clear that if the Indians are not citizens no right of action can be founded upon the oral agreement averred in the petition unless the claimant is relieved therefrom by the provisions of the jurisdictional act. That act, it must be noted, does not create a claim or declare any liability. It does waive the statute of limitations and confers upon the court authority to determine and render final judgment for any balance found due for supplies, goods, etc., furnished members of said tribe after the 1st day of January, 1880.

19 The act in express terms directs the court, first, to ascertain the amount due, if any, and whether any liability exists therefor, and "then determine if such liability be that of the said Menominee Tribe of Indians as a tribe or that of individual members of said tribe."

It will be observed that the provisions of section 2103 of the Revised Statutes referred to apply only to those Indians who were "not citizens of the United States." It follows that if they were citizens of the United States at the time of the alleged agreement the courts of Wisconsin had jurisdiction to adjudicate such claims, whether such contract be treated as express or implied. (Stacy v. La Belle, 99 Wis., 524; Ingraham v. Ward, 56 Kans., 550, and cases there cited.) If they were not citizens of the United States, then the agreement so made can not be enforced in this court, as the same was not reduced to writing with the approval of the Secretary of the Interior as provided by statute.

The action of the Commissioner of Indians Affairs in sending a special agent, as averred, to make some arrangement whereby the Indians could obtain equipment and supplies to enable them to engage in logging business can not, even with the approval as alleged of the Indian agent, be construed as authority to create a liability against the tribal funds. On the contrary, it is averred that payment was to be made "out of the first proceeds from the sale of logs so to be cut and sold." This is the extent of the tribal liability. It is not shown that the tribe as such received, or were to receive, any of the supplies so furnished under the terms of the agreement.

The tribe was not sponsor in the sense of surety for the members of the tribe, as they were not charged with payment, but the tribe, through its chiefs and headmen, agreed that the first proceeds arisings from the sale of the logs through the Indian agent should be applied to the payment of supplies so furnished.

As averred in the fourth paragraph of the petition the Indian agent "received the proceeds of the sale of logs so cut, hauled, banked, and delivered by the Indians who were furnished supplies by petitioner," who, it is in substance averred, failed to pay the claimant for such supplies; but the tribe can not be held responsible for his neglect; nor can a liability be created therefor against the tribe, as

the extent of the liability of the tribe under the agreement was that the proceeds arising from the sale should be first applied to the payment of supplies so furnished. The default of the agent can not be construed as the default of the tribe.

It follows, therefore, that whether the defendant Indians were or were not citizens of the United States no liability attached to the tribe.

Having reached this conclusion it is unnecessary to consider other questions raised by counsel.

The demurrer is sustained and petition dismissed.

20 IX. *Judgment of the Court.*

No. 30179.

F. F. GREEN
v.
THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN and THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 12th day of February, 1912, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants, and do order, adjudge and decree, that the demurrer of the defendants be sustained and that the petition of the claimant, F. F. Green, be, and the same is hereby, dismissed.

By THE COURT.

X. *Claimant's Application for, and Allowance of, Appeal.*

The claimant makes application for an appeal to the Supreme Court of the United States from the judgment heretofore rendered by this Court in the above entitled case.

DUDLEY & MICHENER,
Attorneys for Claimant.

Filed May 11, 1912.

Ordered: That the above appeal be allowed as prayed for.

By THE COURT.

June 17, 1912.

21 Court of Claims.

No. 30179.

F. F. GREEN
vs.
THE MENOMINEE TRIBE OF INDIANS IN WISCONSIN and THE UNITED STATES.

I, Archibald Hopkins, Chief Clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the Per curiam filed by the Court; of the final judgment of the Court; of the application of the claimant for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 20″ day of June, A. D. 1912.

[Seal Court of Claims.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 23,265. Court of Claims. Term No. 690. F. F. Green, appellant, vs. The Menominee Tribe of Indians in Wisconsin and The United States. Filed June 20, 1912. File No. 23,265.